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(T)CMA(TM)/199/2023
(OA/SR.98/2018/TM/CHN)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2024

CORAM

MR.JUSTICE N.SESHASAYEE

(T)CMA(TM)/199/2023
(OA/SR.98/2018/TM/CHN)

M/s.Mex Switchgears Pvt. Ltd.
9th Kilometer, Mex Estate
Pathankot Road
Jalandhar

... Appellant

Vs.

1.G.N.Chandrasekar
Trading as
M/s.Hari Engineering Works
No.10/3-B, Edan Garden, FCI Road
Garnapathy
Coimbatore 641 006

2.The Registrar of Trade Marks
The Trade Marks Registry at Chennai
Intellectual Property Rights Building
Industrial Estate
SIDCO RMD Godown Area
G.S.T Road, Guindy
Chennai 600 032

... Respondents



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PRAYER: Transfer Civil Miscellaneous Appeal (Trade Marks) filed under Section 91 of the Trade Marks Act, 1999, praying to allow the appeal and to set aside the impugned order dated 03.05.2018 passed in the opposition proceedings.

For Appellant : Mrs.Gladys Daniel

For Respondents : Mr.K.Ashok Kumar - R1

Mr.A.R.Sakthivel
Senior Panel Counsel - R2

JUDGMENT

This appeal is directed against an order of the 2nd respondent dated 03.05.2018 by which it had held that the appellant is deemed to have abandoned its opposition to the application for registration of the mark by the 1st respondent.

2.The learned counsel for the appellant submitted that the order came to be passed on the basis that the appellant had not filed its evidence in support of its opposition within the time stipulated. The learned counsel for the appellant adds that the appellant has not been served with a copy of the



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counter filed by the 1st respondent to its opposition and hence the principles of natural justice stands violated.

3.The learned counsel for the Trade Marks Registry informs the Court that as per the e-mail it has been delivered, but then beyond that no further informations are provided.

4.So far as the 1st respondent is concerned, on transfer of the appeal from IPAB, the Registry of this Court attempted to serve the notice of transfer on the 1st respondent as well as its agent. The 1st respondent did not respond, whereas its agent showed both the responsibility and courtesy to the Court to inform the information that it has.

5.When the matter came to be posted on 11.03.2024, this Court passed the following order:

"Mr.K.Ashok Kumar, the learned counsel made a statement on behalf of the agent of the 1st respondent on whom the appellant



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had now taken notice submits, on instruction that the 1st respondent has since closed a business.

2.The learned counsel also added that as per his instructions, the Trade Mark of the 1st respondent had expired sometime in 2022, and it has not been renewed till then. The learned counsel for the petitioner now seeks time to get instructions in the matter.

3.In the meantime, Mr.K.Ashok Kumar, the learned counsel for the agent of the 1st respondent is required to file a Memo vis-a-vis the current status of the 1st respondent.

6.Today, as required Mr.K.Ashok Kumar, the learned counsel for the agent of the 1st respondent filed a Memo, which reads as below:

"1.It is respectfully submitted that Inpro Trade Mark Services was the Trade Mark Agent for the First Respondent herein till 2018. Thereafter, there was no transaction / contact



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between the First Respondent and the Trade Mark Agent.

2.It is respectfully submitted that in the instant matter, our client had received a Notice from the counsel for the appellant. Pursuant to the receipt of the same, the Trade Mark Agent took steps to intimate the receipt of Notice to the First Respondent through his counter part in Coimbatore and also verified the latest status from the Trade Mark Registry Website. The following is the outcome of his attempts:

a.It is pertinent to note that Hari Engineering Works was said to have closed their business, and in their given address someone else is there doing different activity.

b.The Registration of the Trade Mark MAXIMA PUMPSET(2446122) expired on 21.12.2022. They have not renewed it. Further, the 'Restoration' period was



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available till 21.12.2023. They haven't restored and renewed the mark.

3.It is respectfully submitted that this Memo is being filed to bring to the notice of this Hon'ble Court the above facts and thus render justice."

7.The learned counsel for the appellant circulated the current status of the 1st respondent Trade Mark vide a print out obtained from the official website of the 2nd respondent.

8.At one level this Court has information that the appellant has not renewed its mark. Indeed, the status report circulated by the appellant itself indicates that the registration of the Trade Mark of the 1st respondent was valid only upto 21.12.2022, and the time for renewal has also expired. This Court wonders as to why the Trade Marks Registry should wait infinitely to find its auspicious day for deleting the mark which has expired.



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9. This Court, therefore, allows this appeal and modifies the impugned order of the 2nd respondent dated 03.05.2018 passed in the opposition proceedings. The 2nd respondent is hereby directed to notify that the mark of the 1st respondent which is now a bone of contention in this appeal as expired. This exercise is required to be done within a period of two (2) weeks from the date of receipt of a copy of this order. There is no order as to costs.

18.03.2024

kas

Index : Yes / No
Neutral Citation



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N.SESHASAYEE, J.
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